(2018) 02 KAR CK 0004

In the Karnataka High Court

Case No : 40411 of 2015(EXCISE)

Ganapathi?S/o Ramachandra Desai Vs The Excise Commissioner in Karnataka

Date of Decision : 05-02-2018

Acts Referred:

Citation : (2018) 02 KAR CK 0004

Hon'ble Judges : Vineet Kothari

Bench : Single Bench

Advocate : G.K. Bhat, Niloufer Akbar, C.M. Rajaneesh

Final Decision : Dismissed

Judgement

1. The petitioner - Ganapathi, son of Ramachandra Desai, has filed this writ petition in this Court on 18-09-2015, aggrieved by the endorsement

dated 11-06-2014 issued by the respondent - Deputy Commissioner of Excise, as also the order of the Karnataka

Appellate Tribunal dated 15-09-2015 - Annexure ''H'', upholding the said endorsement.

2. The grievance of the petitioner is that the respondent No.4 - Vasudev son of Ramachandra Desai, his younger brother, created a partnership

firm in respect of the CL-9 licence for M/s. Status Bar and Restaurant, Gandhinagar, Bangalore, of which the petitioner was the proprietor earlier

and in the said partnership deed - Annexure ''A'' dated 1st April, 2002, the profit sharing ratio of the present petitioner was reduced to 2% and

remaining 98% to the younger brother - Vasudev. But however in pursuance of the said partnership deed of 2002, the respondent No.4 - Mr.

Vasudev, applied before the Deputy Commissioner of Excise only in the year 2013 for transfer of the said CL-9 licence from that of the proprietorship of the present petitioner to the partnership of the firm and accordingly, the respondent - Deputy Commissioner of Excise passed the

impugned order - Annexure ''D'' on 11-06-2014. On the said transfer application in favour of the partnership firm, upon payment of the requisite

transfer fees and damages for short lifting of liquor in the past period under Rule 14(2) of the Rules.

3. Aggrieved by the said transfer of CL-9 licence, the petitioner filed an appeal before the Karnataka Appellate Tribunal, which too dismissed the

appeal of the present petitioner on 15-09-2015, against which the present writ petition was filed before this Court on 18-09-2015.

4. The respondent No.4 has filed his Statement of Objections and in the said statement of objections, the respondent No.4 - Vasudev son of

Ramachandra Desai has explained the position in para 4 as under :

4. Petitioner is trying to present himself as a hero by falsely stating that he is the one who brought the 4th respondent to Bangalore and made him

to settle down in life. The truth is otherwise. The petitioner and the 4th respondent together were running several hotels in partnership. By the year

2002, the petitioner wanted the business of all other partnerships to be left to him to run them with his family members, in consideration of which

the petitioner was agreed that the business of only M/s. Status Bar and Restaurant shall be given to the 4th respondent. However when it came to

signing the reconstruction deeds of partnership, petitioner was not ready to withdraw himself absolutely from the partnership of M/s. Status Bar

and Restaurant and wanted to retain at least 2% share in it, though agreed to be a dormant partner and allowing the control of business exclusively

in the hands of the 4th respondent. Annexure ''A'' to writ petition is the Deed of Partnership entered between the parties under these

circumstances. The recital in the said deed itself states that the business of M/s. Status Bar and Restaurant was actually carried on by the 4th

respondent and not by the petitioner. Clauses 13, 18 and 19 of the said Annexure ''A'' clearly reflect the intention of parties in entering into that

arrangement. Even though this arrangement was entered into between the parties in the year 2002 itself, it took further 11 years for the petitioner to

agree to submit application in Form 17-B for transfer of licence in the name of the firm, which he did by personally attending the office of the 3rd respondent as stated in Annexure ''D''.

5. The learned Counsel for the respondent also submitted before the Court that the petitioner himself had signed all the requisite applications and

the partnership deed, etc. and therefore the transfer of licence was done perfectly in accordance with rules and the petitioner cannot challenge in

this writ petition before this Court the said transfer of licence. He has also submitted that the petitioner had shifted to Hyderabad and taken over

the family business at Andhra Pradesh and had left the said business of CL-9 licence under the name and style of M/s. Status Bar and Restaurant,

Bangalore, with the respondent No.4 and a nominal partnership share to the extent of 2% was kept for him in the partnership deed of 1st April,

2002 at his request, but that does not deprive the respondent No.4 herein to get the CL-9 licence transferred in the name of the partnership firm,

which has been done in accordance with the relevant rules and the documents and application duly signed by the petitioner himself.

6. Learned Government Counsel also supported the contention of the respondent.

7. Having heard the learned Counsel for the parties, this Court is satisfied that the petitioner cannot lay a challenge to the transfer of licence in

favour of the partnership firm in accordance with the partnership deed dated 1st April, 2002, even though such an application was filed by the said

firm belatedly in the year 2013, since the respondent - firm undertook and paid the requisite transfer fees and other due charges of the Respondent

- Excise Department. If the petitioner has any partnership dispute with the respondent No.4, the remedy for him lies before the Civil Court and this

is not an appropriate forum for the said purpose and the petitioner cannot seek to stall the transfer of licence in favour of the said partnership firm.

The said transfer has already been effected way back in the year 2014 by the impugned endorsement and the same has been upheld by the

Tribunal.

8. This Court does not find any illegality with the same and therefore the present writ petition is devoid of merit and liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.